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May 14, 2012

VIA E-FILING

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570-0001

Re: Rohr, Inc. Operating as Goodrich Aerostructures
Case No. 21-UC-074150

Dear Mr. Heltzer:

In response to the Petitioner's Request for Review in the above-referenced case, the Employer hereby submits to the Board the position statement previously provided to the Regional Director.

The Regional Director chose to decide the case without the necessity of a hearing. Had there been a hearing, we would have submitted additional factual support for our position that the employees in question should not be included in the unit.

The Employer respectfully submits that the Request for Review should be denied or, in alternative, if the Board has questions or requires additional information, the case should be remanded to the Region for a full hearing.

Very truly yours,

JACKSON LEWIS LLP

Edward V. Jeffrey (mjp)

Edward V. Jeffrey

Enclosures

cc: David A. Rosenfeld, Esq. (by E-Mail, drosenfeld@unioncounsel.net)
Pamela G. Parsons, Senior Counsel

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March 8, 2012

VIA ELECTRONIC MAIL

Mr. Alvaro Medina
Board Agent
National Labor Relations Board – Region 21
888 S. Figueroa Street
Floor 9
Los Angeles, CA 90017-5449

Re: Rohr, Inc. Operating as Goodrich Aerostructures
Case No. 21-UC-074150

Dear Mr. Medina:

We submit this letter to set forth the position of Goodrich Corporation (the Employer (identified in the petition as Rohr, Inc. Operating as Goodrich Aerostructures)), with regard to the unit clarification petition filed by IAMAW District Lodge 725, Local Lodge 964 (the Union). For the reasons set forth below, the unit clarification petition filed by the Union should be dismissed.

The Employer and the Union have been parties to a series of collective bargaining agreements dating back to the 1950s.[1] The most recent contract expired on February 12, 2012; the parties recently reached agreement on a successor contract. The bargaining unit represented by the Union is defined as follows:

> The Company recognizes the Union as the exclusive collective bargaining agent for the purpose of representing all production, inspection, and maintenance employees of the Company in the classifications as specified in Appendix "A" who are permanently assigned to existing plants and facilities maintained by the Company in Riverside County . . . .
>
> (Sec. 1.1).

[1] Rohr Aircraft Corp., 104 NLRB 499 (1953).

The Union now seeks to clarify the unit as follows:

Proposed to add: All Man-Tech Unit employees performing Assembly, Lay-up and Production work … .

(UC Petition).

I. A Unit Clarification Petition Is Not Appropriate Absent Changed Circumstances.

Unit clarification petitions have a unique and specific role in the administration of the National Labor Relations Act. As the Board has stated:

> Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within **a newly established classification** … or, within **an existing classification which has undergone recent, substantial changes** in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category – excluded or included – that they occupied in the past.
>
> **Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals**, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent.
>
> Union Electric Co., 217 NLRB 666, 667 (1975) (emphasis added).

The Board also has noted that "the limitations on accretion … require neither that the union have acquiesced in the historical exclusion of a group of employees from an existing unit, nor that the excluded group have some common job-related characteristic distinct from unit employees. **It is the fact of historical exclusion that is determinative.**" United Parcel Service, 303 NLRB 326, 327 (1991) (emphasis added). Indeed, it is an unfair labor practice for an employer and union to "accrete" a group of employees that has been in existence and historically excluded from the unit. Teamsters Local 89 (United Parcel Service), 346 NLRB 484 (2006). Thus, the Board will not entertain a unit clarification petition seeking to accrete a historically excluded classification into the unit, unless the classification has undergone recent, substantial changes:

> Although we affirm the Regional Director's dismissal of the petition, we find that the problem with the petition is not simply un-timeliness. **Rather, because the petition deals with positions that have historically been excluded from the bargaining unit, and have not been shown to have undergone recent substantial changes, it is a petition that the Board would refuse to entertain even if the existing collective-bargaining agreement were about to expire.**
>
> Bethlehem Steel Corp., 329 NLRB 243 (1999) (emphasis added).

In the instant case, the Union seeks to clarify an existing unit by adding positions that have existed for approximately 40 years, but have never been included in the bargaining unit, notwithstanding the absence of any substantial change in the duties or responsibilities of those positions.[2]

II. The Positions Sought by the Union Have Never Been Included in the Bargaining Unit and Have Not Undergone Any Recent or Substantial Change.

The Union represents a Production and Maintenance unit (as described in the recognition clause: production, inspection, and maintenance employees). The positions sought by the Union are Research and Development Technicians. It is undisputed that these positions have been excluded from the bargaining unit for the entire time that they have existed at the plant.

The Employer was, initially, a manufacturing facility. It manufactured, fabricated and assembled components to the design and specifications provided by the customer. In order to enhance its competitive positions, the Employer in 1972 entered into a program of component and material development in which it would provide engineering and design services to the customer. As part of this process, the engineering and design team comes up with developmental/experimental parts which are then built by the Research and Development Technicians. Upon customer approval, and the completion of appropriate testing and certification activities, the Company moves the developmental/experimental parts into production.

As noted above, the Union has represented the production and maintenance unit since the 1950s. In 1976, the Union was certified to represent a technical and clerical unit that included the positions that, at the time, performed the work on the developmental/experimental parts described above. The parties never reached agreement on a contract, the employees filed a decertification petition in 1977, and the Union was decertified at that time. In the 35 years since the Union was decertified, the technical and clerical employees – including the Research and Development Technicians – have not been represented by the Union or by any other union.

While the Board does not require that the union have acquiesced in the historical exclusion of the positions, the Union in this case has done so. The Union agreed to a "final resolution of developmental / experimental work" in 2007 and, in a similar agreement in 2009, the Union agreed that:

> [T]he Company owns all work in the developmental/experimental phase (except tooling, maintenance work and inspection related to flight test on new programs) and such work is not subject to the CBA. This includes all tasks and activities associated with developing the product/parts for potential production, including flight test. When the product/parts become revenue producing hardware (i.e. the FAA certifies all parts for revenue service and the aircraft is eligible to carry passengers) they are then eligible for production.

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[2] As is described below, the positions were briefly represented by the Union 35 years ago for a period of approximately 1 year (from 1976 to 1977) but, even then, were in a separate bargaining unit.

Letter of Agreement dated February 11, 2009.[3]

In addition, several challenges to the status of the positions have failed. For example, in 1984 the Union filed a grievance alleging that "R&D [is] doing adhesive bond work that should be done by production ... ." Arbitrator Henry C. Wilmoth denied the grievance, and concluded that:

> The parties agree that to remain competitive and by extension, to enhance the job security of the bargaining unit, the Employer must maintain the responsibility for Research and Development of new products and processes. The need of the Production Department is obvious and beyond question. The work of the two departments include, but are not limited to, similar skills. In short, the functions of the two departments are of equal importance ... but the functions of the departments are inherently different.
>
> ...
>
> [T]he work of the [Research and Development Department] is experimental and because of that difference it is not work protected by [the collective bargaining agreement] except to the extent that the work is done by a "usual or established manner, process or operation" even as defined by the parties ... .
>
> Thus, the [Research and Development Technicians] should perform all functions directly to, or on, a new or different part of process, leaving to the bargaining unit the part(s) that have been standardized and can be done in a "usual or established manner." It is recognized that similar, perhaps identical, work skills may be employed during the developmental and the production phases.
>
> Opinion and Award, FMCS No. 84K/82656.

In 2006 a laid off bargaining unit employee filed an unfair labor practice charge alleging that the Company failed to recall him to work "and is instead hiring non-union employees." (21-CA-37501). By letter dated December 21, 2006, the Region dismissed the charge, noting that:

> [T]he evidence revealed that since about November 2005, the Employer has hired both laid-off union employees and nonunion employees to work in its research and development department, a nonunionized department. The investigation further revealed that the Employer has discretion to decide who to hire in the research and development department and that laid-off union employees do not have rights to be recalled into this department.

In short, it is undisputed that the Research and Development Technicians currently sought by the Union have been excluded from the bargaining unit for the entire time that they have existed at the plant. This is clear from, among other things, the Opinion and Award of Arbitrator Wilmoth, the Region's decision to dismiss the charge in Case No. 21-CA-37501, and the agreement of the parties over many years.

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[3] The Employer understands that the Union now claims to renounce this agreement.

While the Union's past agreement to the status of these positions is not necessary to the Board's analysis in these cases, their agreement and the Opinion and Award of Arbitrator Wilmoth, the prior decision of the Region, and decades-long practice at the plant confirm the parties' clear understanding of the separate and distinct nature of work performed by the Research and Development Technicians, even if they utilize some of the same work skills. In addition to the undisputed fact of their historical exclusion, the distinct nature of their work – Research and Development as opposed to the Production work of the bargaining unit – renders their inclusion in the bargaining unit inappropriate.

III. The Unit Clarification Petition Should Be Dismissed.

The Union represents a Production and Maintenance unit. The Research and Development employees have existed at the plant for 40 years and have never been part of the bargaining unit. For a brief period 35 years ago (1976-1977) the Union also represented a separate Technical and Clerical unit, which included the Research and Development employees, but the Union was decertified in or around 1977. Since that time the Research and Development employees have remained unrepresented. Their duties and responsibilities have not undergone any substantial change.

In the absence of any changed circumstances, under established Board standards, there is no basis to clarify the unit. The Employer respectfully submits that the instant unit clarification petition should be dismissed.

Very truly yours,

JACKSON LEWIS LLP

Edward V. Jeffrey

EVJ:bb

cc: Pamela G. Parsons, Senior Counsel

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 21

ROHR, INC. OPERATING AS GOODRICH AEROSTRUCTURES Employer/Respondent and IAMAW DISTRICT LODGE 725, LOCAL LODGE 964, Petitioner/Union.	) Case 21-UC-074150))))) **OPPOSITION TO REQUEST FOR REVIEW**))))))))	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was electronically filed upon the following party on the date indicated below:

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570-0001

The undersigned hereby certifies that the foregoing document was duly served by electronic mail to the person at the address set forth below on the date indicated below:

David A. Rosenfeld, Esq.
Weinberg, Roger, & Rosenfeld
1001 Marina Village Parkway
Suite 200
Alameda, CA 94501
drosenfeld@unioncounsel.net

DATED: White Plains, NY, May 14, 2012

Michael Passarella